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MANAGEMENT AGREEMENT

by and among

HYUNDAI MOTOR AMERICA, CITY OF CALIFORNIA CITY

and

DESERT TORTOISE PRESERVE COMMITTEE, INC.

and

CALIFORNIA DEPARTMENT OF FISH AND GAME

And

U.S. FISH AND WILDLIFE SERVICE

regarding

DESERT TORTOISE HABITAT
ACQUISITION, ENHANCEMENT, AND MANAGEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2003, by and between Hyundai Motor America, a California corporation (Hyundai); the City of California City (City) (collectively "Proponents"), the U.S. Fish and Wildlife Service ("Service"), the California Department of Fish and Game ("CDFG"), and the Desert Tortoise Preserve Committee, Inc. ("DTPC"), a California Public Benefit Corporation, hereafter referred to collectively as the "Parties." Execution of this Agreement by the Parties supersedes and terminates any prior agreements executed by and between the Parties.

The Hyundai Automotive Test Track Project ("Project") consists of an automobile test track located in the City of California City, Kern County, California, comprising 4300 acres of private land. The Project is expected to result in incidental take under the federal and state Endangered Species Acts of the federal and state threatened desert tortoise and the state threatened Mohave ground squirrel from an otherwise lawful activity. This Agreement governs the implementation of certain off-site habitat compensation conditions of federal and state incidental take permits to be issued to Proponents by the Service and CDFG.

For and in consideration of the mutual covenants and conditions contained herein, the Parties hereto do hereby agree as follows:

I.

RECITALS

A. LISTING

The desert tortoise (*Gopherus agassizii*), is a species listed as “threatened” under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), and the Mohave ground squirrel (*Spermophilus mohavensis*) is a species listed as “threatened” under the CESA.

B. LEGAL REQUIREMENTS UNDER FEDERAL AND STATE PERMITS

The Service has determined, under Sections 7 and 10(a)(1)(B) of the federal Endangered Species Act, and the CDFG has determined under Sections 2080.1 and 2081 of the California Fish and Game Code, that Proponents likely will impact 3,228.5 acres of desert tortoise and Mohave ground squirrel habitat. The Service and CDFG each has required Proponents to provide for the acquisition, enhancement, and management of 3,228.5 acres of desert tortoise and Mohave ground squirrel habitat. The Parties anticipate entering into a separate agreement to provide for acquisition, enhancement, and perpetual management of additional Mohave ground squirrel replacement habitat as required by CDFG. The Project Impacts involve “incidental take” of desert tortoise and Mohave ground squirrel as that term is defined under the federal and state Endangered Species Acts.

C. COOPERATIVE EFFORT

To fulfill the legal requirements set forth in Paragraph B hereof, each Party to this Agreement agrees to perform certain duties. This Agreement thus describes a cooperative program between the Parties to conserve the desert tortoise and Mohave ground squirrel. It is understood and agreed among the Parties that the DTPC, in performing all of the activities delegated to it under this Agreement, is acting as the authorized agent for Proponents for the limited purposes of acquiring, enhancing and managing replacement habitat for the desert tortoise and Mohave ground squirrel. It is understood and agreed that the Proponents will provide full funding for the activities under this Agreement.

D. PURPOSES

The purposes of this Agreement are:

1. To assure the implementation and adequate funding of the habitat acquisition, enhancement, and management requirements set forth in Paragraph I.B;

2. To contractually bind each Party to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of this Agreement; and
3. To provide remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement.

II.

TERM

A. EFFECTIVE DATE

This Agreement shall become effective on the date that all Parties execute this Agreement and shall remain in full force and effect until the earlier of (1) full satisfaction of each of the Agreement's terms and conditions or (2) termination of the Agreement pursuant to Paragraph II.C. This Agreement may be extended with the written consent of all the parties.

B. CONTINUING DUTY TO PERFORM

The Parties agree that the DTPC's acquisition, enhancement and management of the 3,228.5 acres of replacement habitat shall be permanent and the duty to manage the compensation habitat for the desert tortoise and Mohave ground squirrel shall be required into perpetuity.

C. TERMINATION

DTPC shall work diligently and in good faith to ensure that its responsibilities under this Agreement to acquire the compensation land are completed within twelve (12) months of the initiation of habitat disturbing activities. DTPC agrees to provide progress reports to Proponents every thirty (30) days for the first year or until all land is acquired. If, within six (6) months of the date of this Agreement, DTPC fails to enter into binding agreements to acquire fifty percent (50%) of the land to be acquired pursuant to Paragraph I.B, Proponents may, at their election, terminate this Agreement and stop all construction and operations at the Project. In the event of early termination, the DTPC's duties to enhance and perpetually manage replacement habitat it has acquired shall survive termination and Proponents shall be responsible for providing adequate enhancement and management funding to the DTPC for such acquired habitat.

III.

OBLIGATIONS OF THE PARTIES

A. ACQUISITION, ENHANCEMENT AND PERPETUAL MANAGEMENT OF REPLACEMENT HABITAT.

The Parties shall undertake and fulfill the following responsibilities and obligations:

1. Proponents

(a) Escrow Accounts. Proponents shall establish an Escrow Account in order to adequately fund the habitat acquisition, enhancement, and perpetual management activities under this Agreement. At the direction of Proponents, CDFG and the Service, monies will be paid out of such Escrow Account to DTPC or to a Purchase Escrow Account under certain conditions cited below.

(i) Acquisition Fund. To effectuate acquisition of 3,228.5 acres of replacement habitat, Proponents will allocate \$3,061,586.50 (\$948.30/acre) for the cost of acquiring and transferring desert tortoise and Mohave ground squirrel habitat into two (2) categories for payment.

(1) Acquisition Management Fee. A firm-fixed acquisition management fee of \$252,791.55 (9% of \$2,808,795) will be paid to DTPC from the Escrow Account for professional fees, travel expenses, and other administrative costs required to implement this Agreement (collectively "Acquisition Management Fee"). Payments to the DTPC will be made in pro-rated installments upon DTPC's successful acquisition in fee title of replacement habitat. The following example will illustrate the pro-rata formula for payment to the DTPC of its Acquisition Management Fee:

"A total of 3,228.5 acres is required to be acquired. DTPC acquires 323 acres in fee title and submits all settlement documents to Proponents. DTPC's acquisition at that time constitutes ten percent (10%) of the total acreage required. Therefore, DTPC presents a written request to Proponents, CDFG and Service for release from the Proponents' Escrow Account of a total amount equal to ten percent (10%) of the stipulated \$252,791.55 Acquisition Management Fee amounting to \$25,279.16."

(2) Direct Acquisition Costs. Proponents will direct that Escrow Account monies in the amount of \$2,808,795 (\$870/acre) be paid to or on behalf of DTPC from the Escrow Account into a Purchase Escrow Account to pay for the purchase price, outstanding taxes

and other liens and encumbrances, escrow fees, title fees, Phase I Environmental Report, and documentary and recording fees (collectively "Direct Acquisition Costs") of replacement habitat identified by DTPC and approved by the Proponents, the Service and CDFG. DTPC shall, prior to requesting a release of funds from the Escrow Account to the Purchase Escrow, submit to Proponents, the Service and CDFG for approval a "Proposed Lands for Acquisition Form" ("PLFAF") as described in Exhibit "A", an Estimated Closing Statement, a Preliminary Title Report, and a Conservation Easement Deed as described in Exhibit "B" (collectively "Escrow Documents"). Once the Proponents, the Service and CDFG provides written approval to DTPC of such Escrow Documents, monies held in the Escrow Account shall be transferred to a Purchase Escrow Account to finalize acquisition of approved replacement habitat.

(2) Excess Direct Acquisition Funds. In the event that excess funds remain in the Escrow Account or the Purchase Escrow Account after the requisite acres of replacement habitat have been acquired ("Surplus Funds"), such Surplus Funds shall remain the property of Proponents and may, at the direction of Proponents, be used to purchase additional desert tortoise and Mohave ground squirrel habitat acreage in excess of the acres required to mitigate the Project Impacts. The Parties agree that any such excess acreage may be used at Proponents' direction for other future projects requiring mitigation for impacts to desert tortoise and Mohave ground squirrel or their habitat.

(3) Additional Direct Acquisition Funding. Notwithstanding anything to the contrary, if the funding budgeted by Proponents for Direct Acquisition Costs is not sufficient to accomplish the acquisition of 3,228.5 acres of replacement habitat, Proponents shall be responsible for providing additional funding necessary to complete its replacement habitat acquisition requirements. In the event that additional direct acquisition funding is required, the DTPC agrees that no additional funding will be required for its Acquisition Management Fee.

- (ii) Enhancement Fund. Proponents will pay to the DTPC \$500,417.50 (\$155/acre) for DTPC's use in performing activities designed for the initial protection of 3228.5 acres of habitat acquired (hereinafter "The Enhancement Fund"). Monies from the Escrow Account shall be released to the DTPC on a pro-rated basis upon DTPC's acquisition of a percentage of the total required replacement habitat. The amount required for the Enhancement Fund is subject to change based on an

independent analysis to be performed by the DTPC and agreed to by all the parties.

- (iii) Management Fund. Proponents will pay to CDFG or to the DTPC \$1,275,257.50 (\$395/acre) for use in performing activities designed for the management in perpetuity of 3228.5 acres of habitat acquired (hereinafter "The Endowment Fund"). Monies from the Escrow Account shall be released to CDFG or to the DTPC on a pro-rated basis upon acquisition of a percentage of the total required replacement habitat. The amount required for the Endowment Fund is subject to change based on an independent analysis to be performed by the DTPC and agreed to by all the parties.

(b) In the alternative, Proponents may establish letters of credit, in the amounts described in Subsection (a) above, to provide financial assurance for the acquisition, enhancement and endowment of 3,228.5 acres of compensation lands. The form of the letters of credit will be subject to the approval of Proponents, the Service, CDFG and DTPC.

2. DTPC

- (a) DTPC shall, within thirty (30) days of receiving a request by Proponents, prepare on behalf of Proponents, a Land Acquisition Implementation Plan that satisfies the requirements of the USFWS and CDFG.
- (b) DTPC shall, as authorized agent for Proponents, within Three Hundred and Sixty-five (365) days from the effective date of this Agreement, acquire fee title to the acreage required under Paragraph I.B. pursuant to its Land Acquisition Implementation Plan; or within any other area acceptable to Proponents, the Service and CDFG. DTPC shall exercise good faith efforts to acquire the mitigation lands at fair market value.
- (c) DTPC shall convey to the State of California a Conservation Easement Deed for the replacement habitat acquired in a form acceptable to CDFG. The documents conveying such interests in lands and the conditions of title shall be approved prior to acceptance by either the Fish and Game Commission or the Wildlife Conservation Board. A copy of the proposed Conservation Easement Deed is attached as Exhibit "B."
- (d) Until all of the compensation land is acquired, DTPC shall provide a monthly report to Proponents, and any interested party authorized by Proponents to receive such reports, that accounts for any expenditures of the funds and any activities taken by the DTPC under this Agreement.
- (e) DTPC shall, prior to undertaking any activities that are inconsistent with or materially differ from the terms and conditions of the Service or CDFG incidental

take permits, the Proponents' Habitat Conservation Plan, or this Agreement, obtain prior approval by the Parties to this Agreement.

- (f) With respect to any habitat acquired under this Agreement, the DTPC shall issue an annual report describing its enhancement and management activities for the replacement habitat, the condition (both improvements and negative impacts) of the replacement habitat, and a financial report concerning the Enhancement and Endowment funds.

IV.

REMEDIES AND ENFORCEMENT

A. REMEDIES IN GENERAL

Except as set forth hereinafter, each Party hereto shall have all of the remedies available in equity and at law to enforce the terms of this Agreement and to seek remedies and compensation for any breach thereof, consistent with and subject to the following:

1. Land Owner's Liability

DTPC shall retain whatever liability it possesses as an owner of interests in land. Prior to acquisition of subject property, DTPC shall perform due diligence assessments for hazardous materials and other hazards affecting the property. The Parties to this Agreement reserve the right to enjoin or otherwise involve DTPC as a party in any actions arising out of DTPC's ownership and control of the compensation habitat. DTPC shall indemnify, defend, and hold harmless the Proponents, the Service and CDFG as to any actions arising out of DTPC's ownership and control of the replacement habitat.

2. Injunctive and Temporary Relief

The Parties acknowledge that injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

B. LIMITATIONS AND EXTENT OF ENFORCEABILITY

The purpose of this Agreement is to set forth the obligations and rights of the Parties hereto with respect to the desert tortoise and Mohave ground squirrel habitat compensation provisions of the Service and CDFG incidental take permits and the Proponents' Habitat Conservation Plan. Long-term management of replacement habitat and the Endowment Fund shall be carried out in perpetuity.

V.

MISCELLANEOUS PROVISIONS

A. AMENDMENTS

Except as otherwise set forth herein, this Agreement may be amended only with the written consent of each of the Parties hereto.

B. SUCCESSORS AND ASSIGNS

This Agreement and each of its covenants and conditions shall be binding on and shall benefit the Parties hereto and their respective successors and assigns.

C. NOTICE

Any notice permitted or required by this Agreement shall be deemed delivered to the Parties given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Proponents:

HYUNDAI MOTOR AMERICA
Mr. Finbarr O'Neill
President and Chief Executive Officer
10550 Talbert Ave.
Fountain Valley, California 92708
Telephone: (714) 965 3000

CITY OF CALIFORNIA CITY
Mr. Jack Stewart
21000 Hacienda Blvd.
California City, CA 93505
Telephone:

DTPC:

DESERT TORTOISE PRESERVE COMMITTEE, INC.
President of the Board
4067 Mission Inn Avenue
Riverside, CA 92501

With a copy to its authorized representative:

NONPROFIT COUNSEL, INC.
Attn: Jun Y. Lee
10311 Regency Station Drive

Fairfax Station, VA 22039

USFWS:

**Deputy Manager
U.S. Fish and Wildlife Service
California/Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825**

CDFG:

**Mr. Robert C. Hight, Director
California Department of Fish and Game
1416 Ninth St.
Sacramento, California 95814****D. ENTIRE AGREEMENT**

This Agreement supersedes any and all other management agreements, either oral or in writing among the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made that is not embodied herein.

E. ATTORNEY'S FEES

Except as otherwise provided in this Agreement, if any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

F. DUPLICATE ORIGINALS

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties thereto.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Management Agreement to be in effect as of the date last signed below.

BY:

Mark Hagan
President
DESERT TORTOISE PRESERVE COMMITTEE, INC.
A California Public Benefit Corporation

DATE: _____

BY:

DATE: _____

Name: Finbarr O'Neill
Title: President and Chief Executive Officer
Hyundai Motor America

BY:

DATE: _____

Name: _____
Title: _____

City of California City

BY:

DATE: _____

Name: _____
Title: _____

U.S. Fish and Wildlife Service

DATE: _____

Name: _____
Title: _____

California Department of Fish and Game